

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ELIJAH CHISOLM,

Plaintiff

v.

PRODUCERS RICE MILL, INC. AND CHICAGO
SWEETENERS, INC.,

Defendants
-----x

Docket No.
08 CIV. 4694

**RULE 26.1 DISCLOSURE
STATEMENT**

**JUDGE ASSIGNED:
HON. RICHARD M.
BERMAN**

Defendant, Rafi Industries d/b/a Chicago Sweeteners, Inc., as and for its initial disclosure requirements of Rule 26(a)(1) of the Federal Rules of Civil Procedure, sets forth the following:

Rule 26(a)(1)(A): Provide the name and if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information.

Response: Individuals likely to have discoverable information include all parties of this litigation, all person named in all discovery and investigations, all treating and examining doctors, family doctors of plaintiff, all medical personnel who have rendered care to the plaintiff in the last ten (10) years, custodians of plaintiff's medical, legal, criminal, educational and insurance claims, any and all members of the plaintiff's household, owner(s) of the "railroad box car" at issue in this lawsuit, investigating personnel and/or police, all persons who investigated or prepared a record for any governmental unit in connection with the alleged incident, and any other individuals identified through ongoing pretrial discovery and examination and cross-examination of all parties and witnesses up to and

including the time of trial in this matter.

Specifically, it is believed that non-party witnesses may include, inter alia:

1. James Zeno, P.O. Box 233, South Fallsburg, New York 12279.

Rules 26(a) (1) (B): Provide a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings.

Response: Transportation contract between Chicago Sweeteners and Union Pacific Railroad Company, attached hereto as Exhibit "A".

Rule 26(a) (1) (C): Provide a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

Response: Not applicable.

Rule 26(a) (1) (D): Provide for inspection and copying under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered into the action or to indemnify or reimburse for payments made to satisfy the judgment.


Response: Insurance coverage in this matter is afforded to Defendant, Rafi Industries d/b/a Chicago Sweeteners, Inc., by

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Federal Insurance Company, in the amount of \$1,000,000 under
policy number 35795424, with effective dates of March 1, 2007
through March 1, 2008.

Dated: White Plains, New York
July 21, 2008

EUSTACE & MARQUEZ
Attorney for Defendant,
RAFI INDUSTRIES d/b/a CHICAGO
SWEETENERS, INC.
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

By:


John R. Marquez-JRM - 3628,

TO:

Altier & Vogt, LLC
Philip P. Vogt, Esq.
Attorneys for Plaintiff, Elijah Chisolm
450 Seventh Avenue
36th Floor
New York, New York 10122

Producers Rice Mill, Inc.
P. O. Box 1248
Stuttgart, Arizona 72160

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIJAH CHISOLM,

Plaintiff

against

PRODUCERS RICE MILL, INC. AND CHICAGO SWEETENERS, INC.,

Defendants

RULE 26.1 DISCLOSURE STATEMENT

EUSTACE & MARQUEZ
Attorneys for Defendant
RAFI INDUSTRIES d/b/a CHICAGO SWEETENERS, INC.
Office and Post Office Address
1311 Mamaroneck Avenue
3rd Floor
White Plains, New York 10605
(914) 989-6650

EXHIBIT "A"



AMENDMENT Z
TO
UPLQ-79197.002

UNION PACIFIC RAILROAD COMPANY

Amended Quote

Issued:

Effective:
March 1, 2007

Rates printed as of (February 16, 2007)

Issued by:
Union Pacific Railroad Company
1400 Douglas Street
Omaha, NE 68179



Please use this number in all correspondence.	CJD
UPLQ-79197.002-Z	

AMENDMENT to UPLQ 79197.002

Account Of: TOTAL SWEETENERS INC

Term: The Effective Date of this Agreement shall be March 1, 2007 and it shall expire on September 30, 2007 (Expiration Date).

Subject To: Subject to the the provisions of Union Pacific Railroad Company Governing Rules 4-series, as amended from time to time. This publication can be found at: <http://www.uprr.com/customers/myterms.shtml>

This Agreement shall become binding on the parties upon acceptance by the Customer named above. Customer may accept the terms and conditions of this Agreement either by written notice to Railroad, or by tender of traffic under its terms. Additionally, it is understood that the terms and conditions of the Governing Rules circular specified hereinabove, are hereby unconditionally incorporated herein and accepted by the parties to govern shipments made hereunder.

Reference: All shipping Documents must make reference to UPLQ-79197.002-Z, as well as the seven digit STCC (where applicable), Origin, Destination and Equipment Identification Number on their face when tendered to the Origin Carrier.

Confidentiality: No party may disclose any of the terms of this Letter Quote to any non-party without the prior written consent of the other parties except (1) as required by law; (2) to a corporate parent, subsidiary or affiliate; or (3) to counsel or auditors retained by a party for the purpose of assessing the accuracy of freight charges, if, and only if, they agree in a legally binding instrument that they will abide by this confidentiality clause as if they were a party to this Quote. Each party agrees to indemnify the other from and against any damage(s) suffered by a party as a result of disclosure by a party hereto, or by an auditor, of any of the terms, conditions or rates set forth herein in violation of this CONFIDENTIALITY provision. In the event a party determines that the terms of this Quote have been disclosed to a non-party, then the non-disclosing party shall have the option to terminate this Quote upon thirty (30) days written notice to the disclosing party, and seek whatever other legal remedies it may have.

THIRD PARTY BENEFICIARIES: Unless otherwise specifically referenced in this Letter Quote, it is intended to apply for the sole benefit of the parties hereto and is binding upon their respective successors and assigns. Nothing in this Quote is intended or may be construed to give any person, firm, corporation or other entity, other than the parties hereto, their permitted successors and permitted assigns, and their affiliates any legal or equitable right, remedy or claim under this Quote.

Payment Procedures (Freight Charges): Customer shall pay to the billing Railroad the rate(s) set forth herein, and the charges accrued hereunder, in accordance with the credit and collection terms set forth in Uniform Freight Classification 6000-series, Rule 62, as amended from time to time. Rate(s) in this price document are expressed in U.S. currency.

All claims for overcharges or undercharges (including duplicate payments) for freight charges arising under this Agreement must be filed in writing within twelve (12) months from the date of the original freight bill. Any court proceeding to collect an overcharge or an undercharge shall be commenced within six (6) months of the date of written declaration of a timely filed claim. Overcharge or undercharge claims or lawsuits for less than \$100.00 per freight bill shall not be filed.

UPLQ-79197.002-Z cont'd.

No claim shall be paid if the overcharge or undercharge is found to be under \$100.00 per freight bill.

Refund Application: Union Pacific will refund to Customer fifty (50%) percent of the car hire charge imposed by Transportacion Ferroviaria Mexicana (TFM) up to, but not exceeding, one hundred fifty (\$150.00) dollars per car when empty equipment is supplied from the United States to Customer at Matamoros, Tamaulipas.

Rate Adjustments: Prices are subject to selective increases.

Surcharge: In the event the average price of Retail On-Highway Diesel Fuel (as set forth below, the "HDF Average Price"), calculated monthly based on prices reported on the U.S. Department of Energy Website (eia.doe.gov) equals or exceeds \$1.35 per gallon, UP will apply a fuel surcharge to linehaul freight charges referencing or subject to this authority. The fuel surcharge shall be applied to the linehaul freight charge for each shipment having a bill of lading dated on or after the 1st day of the second calendar month following the calendar month of a given HDF Average Price (e.g., a fuel surcharge applied beginning July 1 would be based on May's HDF Average Price).

The HDF Average Price for a given calendar month will be determined by adding the weekly Retail On-Highway Diesel Fuel prices reported on the U.S. Department of Energy Website (eia.doe.gov), and dividing the result by the number of weeks so reported. The result will be rounded to the nearest cent. If the Department of Energy ceases reporting of the price of Retail On-Highway Diesel Fuel, UP will employ a suitable substitute source of price or measure. The following schedule reflects the applicable fuel surcharges within the HDF Average Price ranges noted below:

<u>HDF Average Price (Per Gallon)</u>	<u>Fuel Surcharge (Percentage)</u>
\$0.00 to \$1.349	0.0%
\$1.35 to \$1.399	1.5%
\$1.40 to \$1.449	2.0%
\$1.45 to \$1.499	2.5%
\$1.50 to \$1.549	3.0%
\$1.55 to \$1.599	3.5%
\$1.60 to \$1.649	4.0%
\$1.65 to \$1.699	4.5%
\$1.70 to \$1.749	5.0%
\$1.75 to \$1.799	5.5%
\$1.80 to \$1.849	6.0%
\$1.85 to \$1.899	6.5%
\$1.90 to \$1.949	7.0%
\$1.95 to \$1.999	7.5%
\$2.00 to \$2.049	8.0%
Each \$0.05 per gallon increase thereafter	Additional 0.5%

In no case will freight charge(s) be reduced below the Base Freight Charge(s) as a result of the application of this item, nor will application or removal of the fuel surcharge be retroactive.

UPLQ-79197.002-Z conf'd.

STCC GROUP	STCC	DESCRIPTION
20 FOOD OR KINDRED GROUP		
	20871	Miscellaneous Flavoring Extracts, Syrups Or Compounds Exc. Chocolate Syrups See 20713
	20998	Tea Or Instant Tea

APPLICATION AND RATES			
COLUMN	RATE APPLICATION RULES		
1.	<p>Rates are in U.S. dollars Per Car.</p> <p>Price applies in railroad owned or leased equipment, OR Price applies in equipment owned by TTX, AND</p> <p>Price applies in equipment with an inside length not exceeding 52 feet 08 inches.</p>		
2.	<p>Rates are in U.S. dollars Per Car.</p> <p>Price applies in railroad owned or leased equipment, OR Price applies in equipment owned by TTX, AND</p> <p>Price applies in equipment with an inside length equal to or greater than 52 feet 09 inches but not exceeding 63 feet 00 inches.</p>		
	Col 1 Rate	Col 2 Rate	Route Code/Group
STCC Group: 20 FOOD OR KINDRED GROUP			
From: BROWNSVILLE GROUP			
To: BERKELEY GROUP			UP
CA, HAYWARD			UP
CITY OF INDUSTRY/COMMERCE GROUP			UP
EAST ST LOUIS GROUP			UP
IL, STELEVILLE			UP
KEARNY GROUP			UP CSST 1000
PA, EAST GREENVILLE			UP NS 2
WA, KENT			UP
From: KEARNY GROUP			
To: BROWNSVILLE GROUP			CSXT UP 1600

APPLICATION AND RATES	
COLUMN	RATE APPLICATION RULES
1.	<p>Rates are in U.S. dollars Per Car.</p> <p>Price applies in shipper owned or leased equipment.</p> <p>Price does not apply in equipment owned by TTX.</p> <p>Price(s) apply in AAR Car Type C, covered hopper cars, OR Price(s) apply in AAR Car Type L06, special type cars.</p>
2.	<p>Rates are in U.S. dollars Per Car.</p> <p>Price applies in railroad owned or leased equipment, OR Price applies in equipment owned by TTX, AND</p>

UPLQ-79197.002-Z cont'd.

RATE APPLICATION RULES			
Price(s) apply in AAR Car Type C, covered hopper cars, OR Price(s) apply in AAR Car Type L06, special type cars.			
	Col 1 Rate	Col 2 Rate	Rate (Code Group)
STCC Group: 20 FOOD OR KINDRED GROUP			
From: TX, BROWNSVILLE			
To: CA, UNION CITY			UP
HERSHEY, PA, GREENVILLE GROUP			UP NS 2
IA, WAVERLY			UP CN 2106
IL, CHICAGO			UP
IL, EAST ST LOUIS			UP
TN, MORRISTOWN			UP NS 1063
WI, BURLINGTON			UP CN 48
WI, SHEBOYGAN			UP
ROUTE CODE	ROUTE GROUP	ROUTE	
UP UP 0		UP	
UP CSXT 1696		UP -East St Louis, IL-CSXT	
UP NS 2		UP -East St Louis, IL-NS	
CSXT UP 1695		CSXT-East St Louis, IL-UP	
UP CN 2106		UP -Iowa Falls, IA-CN	
UP NS 1063		UP -New Orleans, LA-NS	
UP CN 48		UP -Chicago, IL-CN	

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APPENDIX A
ORIGIN AND DESTINATION GROUPS

GROUP NAME
LOCATIONS

BERKELEY GROUP

IL, BERKELEY
IL, CHICAGO
IL, CHICAGO HEIGHTS
IL, MELROSE PARK

BROWNSVILLE GROUP

TX, BROWNSVILLE
TX, LAREDO

CITY OF INDUSTRY/COMMERCE GROUP

CA, CITY OF COMMERCE
CA, CITY OF INDUSTRY

EAST ST LOUIS GROUP

IL, EAST ST LOUIS
MO, ST LOUIS

HERSHEY/E. GREENVILLE GROUP

PA, EAST GREENVILLE
PA, HERSHEY

KEARNY GROUP

NJ, KEARNY
NY, NEW YORK